

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2398 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

KALIDAS H WAGHARI

Appearance:

MR HARDIK RAVAL for Petitioner
None appears for Respondent No.1, though served.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 03/03/2000

ORAL JUDGEMENT :

The petition is filed by the petitioner, Gujarat State Road Transport Corporation ("the Corporation" for brevity), challenging the award dated 3.11.1987 passed by the Labour Court, Nadiad in Reference (LCN) No.8 of 1985, whereby the Labour Court was pleased to reinstate the respondent on his original post with continuity of service with 50% back wages.

2. It is submitted by the petitioner Corporation that the respondent while on duty has remained absent from 1.11.1981 onwards. It is further stated that when the irregularity of the respondent had come to the knowledge of the Corporation, a departmental inquiry has been initiated against the respondent. Charge sheet has been issued against the respondent for the misconduct of remaining absent without any approval or without getting leave sanctioned. Though the charge sheet was issued on 30.7.1982, the respondent did not care to reply to the charge sheet, nor did he remain present at the personal hearing in spite of being informed about the same. Ultimately, the petitioner Corporation having left with no option issued show cause notice dated 1.10.1982 to the respondent asking him show cause as to why his services should not be terminated. For the reasons best known to the respondent, no explanation was submitted by the respondent. The petitioner Corporation decided to terminate the services of the respondent by an order dated 30.12.1982.

3. Being aggrieved by the order of dismissal the respondent raised an industrial dispute. As no compromise could be arrived at the industrial dispute came to be referred to the Labour Court at Nadiad by way of Reference (LCN) No.8 of 1985. Before the Labour Court a Purshis, Exh.18 came to be filed whereby the validity of the departmental inquiry is not challenged and the same is accepted by the respondent. The Labour Court observed that looking to the documentary evidence, Exh.7 to 17 and the other papers of the departmental inquiry conclusions reached by the officer are just and proper. It was also observed by the Labour Court that the respondent workman was given full and reasonable opportunity for defending his case and the departmental inquiry was conducted in accordance with the principles of natural justice. According to the conclusions reached by the Inquiry Officer, the misconduct of the respondent workman was established. However, the Labour Court came to the conclusion that the penalty imposed on the respondent workman for the misconduct in question of dismissal is not proportionate. For the aforesaid conclusion the Labour Court has not given any reasons. On the contrary the Labour Court has observed that the respondent workman has remained absent for a long period of 12 months and that he has not produced any medical certificate and neither original nor any duplicate medical certificate is on record of the case.

4. The approach of the Labour Court of quashing the

order of dismissal and substituting the order of penalty by a punishment of not awarding of 50% back wages is uncalled for. The Labour Court has committed an error in substituting the order of dismissal by non grant of 50% of back wages (the Labour Court has awarded reinstatement with continuity of service with 50% back wages).

5. The respondent workman was serving as a conductor and if he remains absent for a long period of 12 months without any intimation to the authorities it is certainly a misconduct which warrants punishment. It is right that the dismissal may not be a warranted punishment, but at the same time, the workman cannot be allowed to go without any punishment. By the order of the Labour Court, the misconduct of the respondent workman goes almost unpunished inasmuch as he is awarded reinstatement in service with 50% of back wages, which is likely to send wrong signals.

6. Therefore, in the facts and circumstances of the case, the award of the Labour Court to the extent it awards 50% backwages on reinstatement is quashed and set aside and it is ordered that the respondent workman shall not be entitled to any back wages. His reinstatement continues so as to see that his family is not punished for the misdeeds of the respondent workman. Looking to the facts of the case, it is thought proper that the respondent workman must be awarded some punishment. Hence the penalty of stoppage of two increments with future effect is to be imposed so as to serve the ends of justice.

7. The petition is allowed with the aforesaid directions. Rule is made absolute in the aforesaid terms with no order as to costs. Ad interim stay stands vacated.

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